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Letter dated 17 August 2009 from the Acting Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities reflecting its position on the recommendations contained in the ninth report of the Analytical Support and Sanctions Monitoring Team (S/2009/245).

I should be grateful if the attached report could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Christian **Ebner**
Acting Chairman
Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

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Recommendations contained in the ninth report of the Analytical Support and Sanctions Monitoring Team: position of the Committee

I. Introduction

1. Having completed a thorough analysis of the ninth report of the Analytical Support and Sanctions Monitoring Team (S/2009/245, enclosure),[1] the Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities would like to bring to the attention of the Security Council its position on a number of the recommendations contained therein.[2] Some recommendations have been found to be very relevant for the future work of the Committee; others are addressed to Member States to help them implement the sanctions measures (assets freeze, travel ban and arms embargo) decided by the Council. Some recommendations could be useful for the Council itself when considering future resolutions.

2. The Committee highly appreciates the continued efforts of the Monitoring Team to identify ways to further strengthen the sanctions regime and to improve the implementation of the measures. The Committee therefore believes that many of the recommendations should be brought to the attention of the wider membership.

3. In an effort to build on the enhancements to the sanctions regime contained in Security Council resolution 1822 (2008), the Committee placed particular focus on the recommendations aimed at improving the fairness and transparency of the Committee's procedures, as well as on those recommendations aimed at enhancing the rapid dissemination of information required for effective implementation of the measures.

II. The Consolidated List and narrative summaries of reasons for listing

4. **Legal challenges to the regime at the regional and Member State level.** The Committee generally agrees that if a listed individual or entity can demonstrate to the satisfaction of a court that some element of a narrative summary of reasons for listing is incorrect, the State defending the action should be encouraged to forward this information to the Committee. The Committee would then consider taking action on the basis of this information (para. 23).

5. **Listing procedures.** The Committee is of the view that the entries on the List should include the most complete and accurate information possible in order to facilitate implementation by Member States. It therefore encourages its 15 members to add, if possible, further reasons for listing or identifying information when

[1] The report submitted to the Committee on 28 February 2009 in accordance with resolution 1822 (2008) was transmitted to the Security Council on 11 May 2009 and subsequently issued as a document of the Council (S/2009/245).

[2] This is the seventh written report of the Committee to the Security Council on the reports of the Monitoring Team. Earlier reports of the Monitoring Team and reports on the Committee's position on the recommendations can be found on the Committee's website (www.un.org/sc/committees/1267/index.shtml).

considering listing submissions. In order to implement this recommendation, the Chairman of the Committee will explicitly invite Committee members to provide additional information regarding listing requests during the period those requests are being considered by the Committee (para. 26).

6. **The review process for the Consolidated List.** The Committee supports the recommendation to value relevant opinions of courts that have carefully evaluated reasons for listing. The Committee therefore invites Member States to transmit to it relevant court decisions so that the Committee can take such opinions into account when reviewing the corresponding listing. In this connection, the Committee notes that some Member States have already submitted such court decisions as part of their communications to the Committee. The Committee also endorses the recommendation to task the Monitoring Team to gather relevant information from all parties concerned when, in the course of the review pursuant to resolution 1822 (2008), designating States and States of residence and nationality disagree on the continued appropriateness of the listing, or to seek more details when the information provided is vague (paras. 29 and 30).

7. **The procedures for evaluating de-listing requests.** The Committee generally supports this recommendation and will — when it is unable to accede to a de-listing request — submit an appropriate response to the Focal Point for De-listing, or to the Permanent Mission of the relevant State, and ask the Focal Point for De-listing or the Permanent Mission to convey that response to the individual or entity concerned. The Committee also endorses the recommendation to task the Monitoring Team, within the Team's existing mandate, to collect additional information from States or clarify aspects of the de-listing request with the individual, entity or State that has submitted it and submit a report to the Committee (paras. 31 and 32).

8. As regards de-listing requests concerning listed Taliban individuals in Afghanistan, the Committee encourages the Monitoring Team to establish a dialogue with the Afghan authorities and to continue to advise and assist them without referring to any specific criteria for de-listing. In this context, the Committee will ask the Monitoring Team to update the Committee on information received by the Afghan authorities, especially concerning the issue of de-listing requests for Taliban individuals (para. 33).

9. **Broader challenges to the regime.** The Committee generally agrees that more should be done to clarify that the measures targeting listed persons are meant to be preventative rather than punitive. In this context, the Committee recognizes the importance of highlighting the available exemptions to the measures and the procedures for seeking them (para. 34).

10. **Improving the Consolidated List to reflect a targeted and preventative sanctions regime.** The Committee generally supports the Monitoring Team's recommendation that the Consolidated List remain as targeted and actionable as possible. The Committee notes that the review it is currently conducting pursuant to paragraph 25 of resolution 1822 (2008) is intended to ensure that the list is dynamic, up to date and targeted at those who pose a threat to international peace and security. Entries with insufficient identifiers have an adverse effect on the overall credibility of the List and, more importantly, on those individuals who find themselves subject to sanctions because they have a name similar to an entry on the List but, owing to the incompleteness of that entry, cannot demonstrate irrefutably

that they are not the intended target. The Committee therefore encourages States, in cases where a list entry lacks sufficient identifiers, to provide additional information sufficient for positive identification or to consider submitting a de-listing request (paras. 35-37).

11. **Enhancing the timely distribution of the latest version of the List.** The Committee fully agrees that all national departments and agencies that have a role to play in the implementation of the measures should make a clear reference on their website to the Al-Qaida/Taliban sanctions regime and the List and should add, wherever possible, a link to the website of the Committee. Member States are encouraged to establish hyperlinks to the official version of the List on the websites of all relevant ministries and agencies, including those in the areas of finance and immigration (para. 38). The Committee supports the recommendation that all States, in conformity with applicable legislation, make use of the Committee's website to access the most up-to-date version of the List and thus ensure that sanctions are applied to new listings in a timely manner. In particular, the Committee encourages States to authorize their financial institutions and other relevant bodies to check the electronic version of the List for changes so as to ensure quick and accurate implementation. In addition, the Committee recommends that States exercise caution in maintaining any separate version of the Committee's List due to the risk of mistakes (para. 40).

12. **Handling requests for information.** To address follow-up queries by sanctions implementers on existing entries, the Committee agrees with the recommendation to encourage States to appoint a national enquiry or contact point for the Al-Qaida/Taliban sanctions regime that could allow for speedy clarification concerning entries on the List or issues relating to the implementation of sanctions. Such a national contact point should have easy access to the Committee and the Monitoring Team (para. 41). Furthermore, the Committee is of the view that exchanges of information between States and other relevant parties, such as the International Criminal Police Organization (INTERPOL), aimed at resolving questions regarding the identity of a listed individual could be facilitated if States indicated in their listing requests whether the Committee could share their identity as a designating State with authorized parties without further consultation. The Committee will therefore consider including, in a revised cover sheet for listing, an option that allows States to signal their willingness to have their identity shared with specific relevant parties (para. 53).

13. **The Taliban section of the List.** The Committee considers it appropriate for the Monitoring Team to work with relevant States, the United Nations Assistance Mission in Afghanistan (UNAMA) and the United Nations Office on Drugs and Crime to analyse the interface between the drug trade and financial flows to the Taliban and to identify key figures that are associated with the Taliban in this way, as well as individuals and businesses established by the Taliban to manage their cash flows, so as to allow the Committee to consider their designation for listing. The Committee wishes to underscore that States should promptly submit listing requests for any individuals and entities that meet the criteria set out in the relevant resolutions (para. 43).

14. **Deceased people on the List.** In the interest of the credibility and effectiveness of the List, the Committee agrees on the importance of keeping under review listed individuals who are reported to be dead. Acknowledging the

importance of addressing the issue of deceased persons included in the List, the Committee decided to undertake a review of deceased persons in the framework of the review pursuant to paragraph 25 of resolution 1822 (2008). In the course of the review, any member of the Committee or the Chairman in his/her national capacity can consider submitting de-listing requests (para. 44).

15. **Narrative summaries.** The Committee fully endorses the recommendation to delete from its website the corresponding narrative summary when it decides to remove an entry from the List and will immediately implement this practice. Furthermore, the Committee intends to address the issue of removing from its website all references to individuals and entities that have been de-listed. In this connection, the Committee notes that the recommendation to update narrative summaries whenever an entry is reviewed, and whenever appropriate, is already being implemented.

III. Assets freeze

16. **Integrating the international effort.** Noting that compliance with the Al-Qaida/Taliban sanctions regime is now an integral part of the mutual evaluation reports compiled by the Financial Action Task Force (FATF), FATF Style Regional Bodies (FSRB), the World Bank and the International Monetary Fund (IMF), the Committee fully endorses the recommendation to encourage these and other bodies, including the Organization for Economic Cooperation and Development (OECD) and the Egmont Group of Financial Intelligence Units, to introduce hyperlinks on their websites to the Committee's website (paras. 56-57).

17. **Helping States to identify and deal with terrorist financing.** The Committee agrees on the importance of promoting the timely identification of Al-Qaida and Taliban financiers and their activities and therefore supports the recommendation to carry out, in coordination with the Monitoring Team, the Counter-Terrorism Committee (CTC) and its Executive Directorate (CTED), the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime and other relevant international organizations, a survey of current practices and to consult with States and offer advice at States' request on how to enhance cooperation between law enforcement agencies and counter-terrorism units (para. 61).

18. **The private sector.** The Committee has taken note of the concern expressed by many financial institutions that they should not be subject to penalties as a result of their implementation in good faith of the sanctions measures. In this connection, the Committee notes that the Security Council, as it considers a new resolution subsequent to resolution 1822 (2008), may wish to take into account the possibility of directing States to provide adequate legal protection to financial institutions so as to promote effective implementation of the assets freeze (para. 67).

19. In addition, the Committee generally supports the recommendation that would allow financial institutions to avoid entering certain one-word alias identifiers into their primary filters for searching the List. In this connection, the Committee draws the attention of Member States to the possibility of allowing their financial institutions to disregard identifiers that have been defined on the List as being "low quality" primary search terms in order to avoid numerous false positives. The Committee would like to note that this problem will be addressed through the design of a new format for the List by the Committee and the Monitoring Team (para. 69).

20. **Unregulated cash transfers.** The Committee agrees that in many parts of the world cash transfers, especially through *hawaladars* and other alternative remittance systems, are an essential part of the economy. The Committee therefore encourages States to ensure that *hawaladars* implement the same due diligence rules that govern the formal sector, check names against the List and submit suspicious activity reports. In this regard, FATF Special Recommendation VI on alternative remittances might be useful to some States (paras. 62 and 63).

IV. Travel ban

21. **Obstacles to effective implementation.** The Committee shares the view of the Monitoring Team that listings containing few identification details are an obstacle to effective implementation and can lead to mistakes or affect unintended individuals. The Committee therefore calls upon INTERPOL to inform it when an individual has been mistakenly prevented from crossing a border based on an INTERPOL-United Nations Security Council special notice so that the relevant special notices and related entries on the List can be improved. In line with its mandate to consider cases of possible non-compliance with the measures, the Committee will consider giving the Team additional authority, on a case-by-case basis, to seek out, collate, assess and verify information related to possible violations of the travel ban. The Committee wishes to note that all States engaged in reconciliation processes involving the travel of listed individuals should seek appropriate exemptions from the travel ban and should be ready to contact the Committee for clarification of any relevant issues related to de-listing (paras. 75 -77).

22. **Exemptions to the travel ban.** The Committee encourages States to update, where necessary, their national guidelines and regulations in accordance with the new section of the guidelines of the Committee on the procedures for applying for a temporary exemption from the travel ban (see sect. 11).

23. In the case of Committee authorized travel of a listed individual who is resident in a State of which he is not a national, the Committee would like to recommend that, upon completion of the travel, the State of residence should allow the individual to re-enter in accordance with national legislation (paras. 78 and 79).

24. **Identifying challenges to implementation of the travel ban.** The large numbers of travellers who cross borders and the many national agencies that are involved in the process have made it difficult for States to manage the flow securely without creating delays and disruptions. States that have not developed the capacity to make automated checks against all national and international stop lists are less likely to scrutinize documents used by listed individuals who try to hide in the crowd. The Committee therefore agrees with the Monitoring Team that the Committee should, in cooperation with CTC and their expert groups, provide tailored advice to consenting States and facilitate assistance to enhance their capacity to implement the travel ban. The Committee encourages all States that deem it relevant to consider conducting, in cooperation with the Counter-Terrorism Implementation Task Force (CTITF) Working Group on Integrated Assistance, assessments of their capacity to implement the travel ban and to consider submitting such assessments to the Committee if it is found that assistance with implementation is needed (paras. 80 and 81).

25. The Committee recalls that it has produced an information package on the sanctions regime (including the travel ban) that several international organizations have begun to use for briefing and training courses. The Committee has added this information package to the "useful documents" section of its website and encourages States to use the information package when training national officials who may have to deal with the implementation of the travel ban (para. 82).

V. Arms embargo

26. **Definition of the arms embargo.** The Committee is aware of the difficulties States are facing to prevent the indirect supply, sale or transfer of arms and related material, or military technical advice, assistance and training, to individuals who are members of listed entities but who are not listed themselves. The Committee, as a first step, wishes to clarify that compliance with the indirect provision obligation requires States to detect and identify non-listed individuals acting as part of a listed entity for the purposes of obtaining arms, related material or military technical advice. Furthermore, the Committee encourages States to share information about such individuals, including through INTERPOL (paras. 83 and 84).

27. **The situation in Afghanistan and Pakistan.** The Committee recognizes that the continuation of Taliban-associated insurgencies in Afghanistan and other parts of the region since 2002 suggests insufficient implementation of the arms embargo. The Committee therefore endorses the recommendation to try to determine whether States were unable to prevent the direct or indirect provision of arms and related material to Al-Qaida, the Taliban and their associates in the border areas of Pakistan and Afghanistan, whether from their territories or by their nationals outside their territories. The Committee intends to follow up on this recommendation in the framework of paragraph 32 of resolution 1822 (2008), in which the Committee was directed to identify possible cases of non-compliance and determine the appropriate course of action (para. 86).

28. **The situation in Somalia and the Horn of Africa.** Given the security and humanitarian impact of continued internal conflict in Somalia, the Committee fully agrees with the relevant recommendation of the Monitoring Team. It will remind States, in particular those of the region, of their responsibilities in relation to the Al-Qaida/Taliban arms embargo and the potential repercussions of non-compliance. The Committee also wishes to encourage relevant States to submit for inclusion in the List names of individuals and entities from the subregion that are associated with Al-Qaida (paras. 88 and 92).

29. **Children and armed conflict.** In light of the threat of recruitment of children by Al-Qaida and the Taliban and in accordance with resolution 1612 (2005), in which the Security Council urged United Nations entities to take appropriate measures to control, inter alia, the use and recruitment of children as soldiers, the Committee agrees with the recommendation to work with the Office of the Special Representative of the Secretary-General for Children and Armed Conflict to identify areas for possible cooperation (para. 95).

VI. Monitoring Team activities

30. **Cooperation with the Counter-Terrorism Committee and the 1540 Committee.** The Committee agrees that the issue of technical assistance is of common interest to CTC, the 1540 Committee and the Al-Qaida and Taliban Sanctions Committee and therefore fully subscribes to the recommendation that all three expert groups should develop, in cooperation with the CTITF Working Group on Integrated Assistance and for the consideration of their respective Committees, a common strategy that sets out a more comprehensive and coordinated approach to technical assistance by the three committees and their expert groups (paras. 101 and 104).

31. **Security Council and INTERPOL cooperation.** The Committee agrees that the narrative summaries of reasons for listing of relevant entries on the List should be added to the INTERPOL-United Nations Security Council special notices; the Committee also agrees that any delay between the Committee's decision to add a name to the List and the appearance of a corresponding special notice in the INTERPOL database should be minimized. The Committee has therefore asked the United Nations Secretariat, in coordination with the Monitoring Team, to work with INTERPOL to develop modalities by which the Committee, through its secretariat and Monitoring Team, would gain access to the INTERPOL I-24/7 secure police communications system (subject to the approval of the General Assembly of INTERPOL) in order to facilitate the speedy transfer of new information related to list entries and their accompanying narrative summaries for issuance as part of the special notices (paras. 107 and 110).

32. The Committee notes that the use of INTERPOL-United Nations Security Council special notices in conjunction with existing INTERPOL databases and regional and national databases can greatly facilitate implementation of the travel ban. Therefore, the Committee requests designating States, wherever possible, to provide passport details in their submissions so as to take full advantage of this facility (para. 108).

VII. Member State reporting

33. While the Committee strongly encourages States that have not yet done so to submit the implementation reports called for in Security Council resolution 1455 (2003), the Committee agrees that implementation is more important than reporting and, in line with the Monitoring Team's suggestion, expects the Team to continue to engage with non-reporting States individually or in regional or subregional groupings, and to further explore ways to assist those States, including through sanctions workshops.

VIII. Conclusion

34. The Committee would like to thank the Monitoring Team for its ninth report and its useful and forward-looking recommendations contained therein. The aim of the present report is to highlight those recommendations made by the Monitoring Team that the Committee found to be of particular relevance and/or which should be implemented on a priority basis. Some recommendations need further in-depth

analysis or conceptual development in order to be implemented in practical terms. The Committee looks forward to further input from the Monitoring Team in this regard.

35. In order to further enhance its dialogue with Member States, the Committee also wishes to encourage all States to share with the Committee their views and experiences in respect of implementing the sanctions measures at the national level, including by sending representatives to meet with the Committee pursuant to paragraph 30 of resolution 1822 (2008).

36. The Committee expresses its appreciation to the Monitoring Team for its comprehensive and high-quality report and for the valuable recommendations contained therein.